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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
PG&E CORPORATION

and

PACIFIC GAS AND ELECTRIC
COMPANY,

Debtors.

Case Nos. 19-30088 DM (Lead Case)
19-30089 DM

Chapter 11
Jointly Administered

- ☐ Affects PG&E Corporation
☐ Affects Pacific Gas and Electric Company
☒ Affects both Debtors
* All papers shall be filed in the Lead Case
No. 19-30088 DM.

**OPPOSITION BY TURN TO DEBTORS'
AMENDED MOTION FOR ENTRY OF
ORDERS (I) APPROVING TERMS OF, AND
DEBTORS' ENTRY INTO AND
PERFORMANCE UNDER, EXIT
FINANCING COMMITMENT LETTERS
AND (II) AUTHORIZING INCURRENCE,
PAYMENT AND ALLOWANCE OF
RELATED FEES AND/OR PREMIUMS,
INDEMNITIES, COSTS AND EXPENSES AS
ADMINISTRATIVE EXPENSE CLAIMS**

Date: January 29, 2020
Time: 10:00 a.m. (Pacific Time)
Place: United States Bankruptcy Court
Courtroom 17, 16th Floor
San Francisco, CA 94102

OBJECTION DEADLINE: January 22, 2019
[Re Docket nos. 4446 & 5267]

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1 The Debtors seek authority to (1) pay \$210 million in cash to the Backstop Debt
2 Commitment Parties without proof that market conditions warrant incurrence of this cost, (2) incur
3 up to an allowed \$764 million administrative expense to the Equity Backstop Parties payable in New
4 PG&E Corp. Common Stock only if the Debtors' plan is confirmed but in cash if any other plan is
5 confirmed, and (3) pay additional professional fees and expenses associated with these transactions
6 (capped at \$36 million for the Equity Backstop Parties, but without apparent limit otherwise. Should
7 a competing plan of reorganization be confirmed, a real possibility given the position of the
8 Governor that the current plan does not comply with AB 1054, some and perhaps all of these
9 expenses might not benefit the estate. The Utility Reform Network ("TURN") questions whether the
10 Debtors are exercising proper business judgment and opposes the Amended Motion¹ as follows:

11 **1. The Amended Motion Would Result in Large Costs That Will Not Benefit the**
12 **Estate If A Plan Other Than the Debtors' Is Confirmed.**

13 **a. Fees and Costs.**

14 Though the Debtors have provided no firm estimate of the fees and other costs and expenses
15 associated with the "Exit Financing Obligations" that are the subject of the Amended Motion, the
16 total figure is admitted by the Debtors to be upwards of nearly billion dollars. According to the
17 Debtors, the aggregate fees associated with the "Exit Financing Obligations" subset of the financing
18 subject to the Amended Motion could amount to at least \$210 million payable in cash to the
19 "Backstop Debt Commitment Parties," and approximately \$764 million payable in stock to the
20 "Equity Backstop Parties," plus associated professional fees which, for just the legal and financial
21 advisor fees for the Equity Backstop Parties alone, could total \$36 million. (*See* Amended Motion,
22 7:18-19, 7:25-26). These fees are payable by the estate at a time where a credible, competing, and
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26 ¹ Debtors' Amended Motion for Entry of Orders (i) Approving Terms of, And Debtors' Entry
27 into And Performance Under, Exit Financing Commitment Letters and (ii) Authorizing Incurrence,
28 Payment and Allowance of Related Fees and/or Premiums, Indemnities, Costs and Expenses as
Administrative Expense Claims [Dkt. #5267] (the "Amended").

1 potentially confirmable plan remains on the table; should the alternative plan be confirmed, the
2 financing that is the subject of the Amended Motion may be never be needed. The fees for this
3 potentially unnecessary financing would be paid primarily to the Debtors' equity holders."² Thus,
4 if granted, the Amended Motion would add as much as \$1 billion of allowed administrative expense
5 to the estate, without sufficient demonstration that the underlying financing mitigates a risk
6 warranting such incurrence even if the Debtors' plan is confirmed, and without addressing the
7 prospect that the underlying financing would likely be rendered largely and perhaps entirely
8 unnecessary if a competing plan is confirmed.
9

10 **b. Impact on Competing Plans.**

11 The Debtors would have the Court allow the Exit Financing Obligations as an administrative
12 expense "whether or not the Exit Financing Commitments are funded" and none of such amounts
13 are subject to change under "any chapter 11 Plan." (*See*, Amended Motion, 28:16-18). One
14 outcome that would appear to trigger these provisions is confirmation of the plan of reorganization
15 sponsored by the Ad Hoc Committee. And should the Ad Hoc Committee's plan be confirmed
16 instead of the plan sponsored by Debtors, a substantial portion of the costs of these Exit Financing
17 Obligations will be associated with financing that has been rendered irrelevant or unnecessary.
18

19 The relief sought in the Amended Motion would unduly advantage the Debtors' plan over
20 the Ad Hoc Committee's plan. If the Exit Financing Obligations are given administrative expense
21 priority, the Ad Hoc Committee would, if its plan is confirmed, effectively be required to supply
22 funding for not only the financing instruments associated with its own plan, but also the Exit
23 Financing Obligations costs. If the roles were reversed and the Debtors' plan were confirmed rather
24 than the Ad Hoc Committee's plan, there would be no corresponding opportunity for the Ad Hoc
25
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27 ² Letter to the Court dated November 4, 2019 by Attorney David J. Richardson [Dkt. #4575].
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1 Committee to recover any portion of the costs of obtaining their unconfirmed plan's financing.
2 This Court should consider how the massive costs of the Amended Motion might serve to block or
3 hinder confirmation of any other plan since they must be paid in cash (not stock as the Debtors' plan
4 permits) if another plan is confirmed.³

5
6 **2. The Debtors' Should Not Receive Bankruptcy Court Authority to Bind Themselves**
7 **to Exit Financing Until Both Plan Sponsors Have Submitted Supporting Material**
8 **Necessary for The PUC To Assess Whether Either of The Competing Plans Satisfies**
9 **the Requirements of AB 1054.**

10 The California Public Utilities Commission (PUC) has initiated an investigation proceeding
11 to review the two plans of reorganization (the "PG&E Plan" and the plan of the "Ad Hoc
12 Committee," now referred to as the "AHC Plan"). The PUC "will review the Plans for their
13 consistency with state law (particularly Pub. Util. Code section 3292) and related issues," including
14 "financial and operational issues over both the short term and the longer term." *Assigned*
15 *Commissioner's Scoping Memo and Ruling ("Scoping Memo")* (November 14, 2019), p. 2. Pub.
16 Util. Code section 3292(b) sets forth the conditions that PG&E, as an electrical corporation that is
17 the subject of an insolvency proceeding, must meet in order to take advantage of the Wildfire Fund,
18 and the determinations the PUC must make in its review and approval of the reorganization plan and
19 other documents resolving the insolvency proceeding. *See*, Pub. Util. Code section 3292(b)(1)(A)
20 through (E).

22 In mid-November, the PUC initially adopted a bifurcated approach to the review, with an
23 earlier review of "non-financial issues," followed by later consideration of "financial issues when
24 there may be greater certainty." *Id.* In late-December, the PUC revised its approach in light of

26 ³ "Additionally, in the event that a plan of reorganization other than the Debtors' Plan is
27 confirmed, the Commitment Premiums shall be paid in cash if elected by the applicable Equity
28 Backstop Party." Motion, 14:12-13.

1 “subsequent developments,” including PG&E’s having presented an Amended Plan of
2 Reorganization. There will now be “one phase addressing both financial and non-financial issues”
3 of each of the competing plans. *Administrative Law Judge’s Ruling Modifying Schedule* (December
4 27, 2019), p. 3. Under the most recently-revised schedule, on January 31, 2020, each plan’s
5 proponents will serve testimony and other supporting material addressing financial issues as
6 necessary to permit the PUC to determine compliance with AB 1054. *Id.*, p. at 4, *E-Mail Ruling*
7 *Granting in Part Motion To Modify Schedule of Pacific Gas & Electric Company* (January 16,
8 2020), and *Scoping Memo*, pp. 6-7. Responding parties will provide their own evidence and
9 testimony two weeks later.
10

11 TURN expects that the testimony and other materials provided by the Debtors on January 31
12 to the PUC can reasonably be expected to supply at last some of the detail and justification that the
13 Amended Motion and its supporting declaration lack. And if the PUC, in conducting the review
14 required under Pub. Util. Code section 3292, were to determine that the Debtors’ plan fails to satisfy
15 the statutory conditions, the Bankruptcy Court’s forbearance on the Debtors’ Exit Financing
16 requests here could serve to avoid adding nearly \$1 billion of administrative expense to the estate.
17 TURN respectfully requests that the Court deny the Amended Motion for the reasons set forth above
18 or continue it until after the PUC determines whether the Debtors’ plan meets the state law
19 standards, rather than permit the Debtors to obligate the estate to bear up to \$1 billion of costs
20 associated with exit financing that may prove unnecessary.
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23 Dated: January 22, 2020

BINDER & MALTER, LLP

24 By: /s/ Robert G. Harris

25 Robert G. Harris

26 Attorneys for TURN, the Utility Reform
27 Network
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